

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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June 20, 2001

Ronald D. Bender
Sprinkler Fitters & Apprentices
23314 Cabot Boulevard
Hayward, CA 94545-1685

RE: Public Works Case No. 2001-007
Construction of Alameda County Office Building

Dear Mr. Bender:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations (CCR), section 16001(a). Based upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction of an Alameda County Office Building ("Project") in Hayward is a public work subject to the payment of prevailing wages.

In this case, the County of Alameda ("County") entered into a "Build-to-Suit Office Lease" on July 27, 1999 with Alex S. Palmer & Company ("Developer"). Under this agreement, the Developer agreed to construct a six-story office building at a specified location in Hayward and the County agreed to lease 100% of the square footage from the Developer for 20 years under a scheduled payment arrangement. The Developer awarded the construction contract, dated August 27, 1999 and executed on February 15, 2000, to Nielsen Dillingham Builders ("Contractor").

Labor Code §1720.2 states that "public works" also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

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(c) Either of the following conditions exists:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

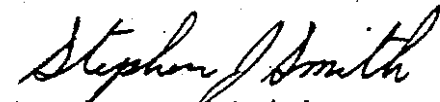
Applying §1720.2 to the subject case, the construction contract is between private persons, the Developer and the Contractor. In addition, the property subject to the contract is privately owned by the Developer and the County has agreed to lease 100 percent of the assignable square feet of the building upon its completion. As to the last requirement, the lease agreement between the Developer and the County was entered into prior to the construction contract. Therefore, the Project is a public work because the conditions specified in §1720.2 exist in this case.

Under the terms of the lease agreement, the County is considering subletting a portion of the building to other government entities and to a privately managed café. For §1720.2 purposes, however, the County has agreed to lease 100% of the square footage of the building, upon completion of construction, from the Developer. In addition, the subject §1720.2 determination is not changed by the fact that the lease contains an option for the County to purchase the property for a lump sum amount from the Developer at some future time.

In conclusion, the construction of the Alameda County Office Building in Hayward is a "public work" in accordance with §1720.2 and is, therefore, subject to the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

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